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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,941	09/22/2003	Andrew Walker	P-US-CS 1144	1634
7590 Bruce S. Shapiro Black & Decker Corporation Mail Stop TW199 701 E. Joppa Rd Towson, MD 21286			EXAMINER KYLE, MICHAEL J	
			ART UNIT 3677	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/667,941	<b>Applicant(s)</b> WALKER ET AL.	
	<b>Examiner</b> Michael J. Kyle	<b>Art Unit</b> 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “fastening mechanism” and “motor” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
2. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

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3. Claim 13 is objected to because of the limitation "said gripping portion" in line 9 of the claim. This limitation has not been previously provided for in this claim.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-7 and 9-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, the "gripping portion", "gripping region", "cover piece", "clamping member", and "support" do not appear to be defined in the specification, in such a manner to enable an ordinarily skilled artisan to make or use the invention. It is recognized that the claim language is not required to have a direct correlation to the language of the specification, as long as it is clear to a person of ordinary skill. However, in this case, the specification is silent to each the above elements and does not appear to adequately describe in manner to suggest the correlation to the claimed structural and functional limitations.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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7. Claims 1-7 and 9-15 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. All independent claims recite “a gripping portion”. This terminology is not supported by the specification, and it appears the “gripping portion” is referring to different elements, or combinations of different elements, throughout the claims.

9. Claim 1 recites “a gripping portion”. This terminology cannot be found in the specification. As best understood, the gripping portion of claim 1 is referring to the handle 304, or analogous element in the other embodiments depicted.

10. Claim 1 recites a “clamping member”. This terminology is not found in the specification. As best understood, the clamping member is the securing plate 11, or an analogous element of a different embodiment.

11. Claim 2 requires a “gripping portion” comprising at least one flexible sheet and at least one support. Neither the “gripping portion” nor “support” appears to be described in the specification. As best understood, the gripping portion is referring the handle as whole, depicted at 304 in applicant’s drawings. It is unclear of the “support” is referring to a securing plate or an element of the housing. If the support is part of the housing, it is unclear how the support is structurally different from the housing, or if it is only referring to a region of the housing. As best understood, the securing plate described in the specification is the support.

12. Claims 3-5 depend from rejected claim 2 and include all limitations thereof. For this reason, these claims are also rejected.

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13. Claim 6 requires a “handle comprising a gripping portion and a chamber...”. It is unclear if the gripping portion is structurally distinguishable from the handle, or if it refers only to a region intended to be gripped by a user. If it is referring to a region on the handle, it does not appear as though the boundaries of the region have been established. Additionally, it is unclear if the claimed “cover piece” is a part of the gripping portion. It is noted that the phrase “cover piece” does not appear to be used in the specification. As best understood, the claimed “cover piece” refers to securing plate 11. Additionally, it is unclear how the gripping portion is adapted to be contacted by a user’s hand if it is covered by the cover piece as required by this claim.

14. Claim 7 depends from rejected claim 6 and includes all limitations thereof. For this reason, this claim is also rejected.

15. Claim 9 requires a “gripping region including a recess portion”. Similar to the “gripping portion” addressed above, the specification does not provide for a “gripping region”.

Additionally, the relationship is unclear between the gripping region, recessed portion, handle, and chamber, such that there is substantially no vibration damping medium located between the recess portion and the handle, and how the gripping region includes a recess and covers a portion of the handle. As best understood, the gripping region is a region on the handle that is intended to be gripped by user. In this region, there is a recess, into which the chamber is placed and secured, similar to what is shown in figure 3c. In this case, the gripping portion appears to be analogous to the securing plate 211. It is further noted that the figures do not appear to show a drill having this configuration.

16. Claim 10 depends from rejected claim 9 and includes all limitations thereof. For this reason this claim is also rejected.

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17. Claim 11 is rejected because the it is not clear what the relationship between the “two cover pieces” and gripping region, such that the chamber protrudes through an aperture of the cover piece. From claim 9, it appears as though the chamber protrudes from a recess in the gripping region.

18. With respect to claims 12 and 13, the claims require a gripping portion “including an inner surface of the housing for retaining the chamber...”. The relationship between the chamber, gripping portion, and housing is unclear. Specifically, it is unclear how the gripping portion includes an inner surface of the housing portion, and covers the housing portion as also required by the claims. It appears that the claimed structure of the handle, housing, and gripping portion may overlap.

19. Claim 14 depends from rejected claim 13, and includes all of the limitations thereof. For this reason, this claim is also rejected.

20. Claim 15 requires a gripping portion and a cover piece, where the cover piece forms at least part of the gripping portion, covers a portion of the gripping portion, and functions as the gripping portion adjacent the chamber. The relationship between these elements such that all functions are met, is unclear. For example, if the gripping portion is to be gripped by the user, it would appear that this function could not be met if the cover portion covers the gripping portion. Further clarification was not found in the specification. As best understood, the cover pieces is referring to securing plate 11, or analogous elements, and the gripping portion is an outer portion of the handle intended to be gripped by the user. It appears that there is overlap in between the claimed housing, gripping portion, and cover piece.

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21. Applicant is requested review claims for further inconsistencies in terminology between the claims and the specification, and for inconsistent description of structural relationships and functions. For the purpose of this examination, the “gripping portion” and “gripping region” is considered to be a general term describing an area on the tool, the may overlap with other elements including the handle, housing, and cover piece.

***Claim Rejections - 35 USC § 103***

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claims 1, 6, 7 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagan et al (“Hagan”, U.S. Patent No. 6,805,207) in view of DeLuca et al (“DeLuca”, U.S. Patent No. 6,591,456). Hagan discloses a power tool with a housing (12) and motor (14), a gripping portion (30) adapted to be engaged by a hand of the user, and at least one flexible member (102) and a clamping member (100) having an aperture therein so that the clamping member clamps the flexible member to the housing (12). In figures 2 and 11, the flexible member is clamped to the housing by the force from connecting screws 138 between cap 30 and housing 12. The clamping member (100) includes a fastening mechanism (138) for securing the clamping member with the housing for covering a portion of the housing (open end portion is covered by the cap) and the clamping member provides a surface adjacent to the flexible

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member. Hagan does not disclose a gaseous damping medium retained between the flexible member and housing.

24. DeLuca teaches a tool with a gripping portion where the gripping portion includes a flexible member (100) containing a gaseous damping medium (column 12, lines 20-21). The flexible member protrudes through an aperture (254) in a clamping member (230, 250, 256). DeLuca uses the arrangement to provide a cushioning effect for the user (abstract). DeLuca also shows the flexible member may be solid, similar to that of Hagan, or gaseous, similar to applicant's. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Hagan as taught by DeLuca, such that Hagan includes the flexible member with a gaseous damping medium in order to provide a cushioning effect for the user. DeLuca shows that either a solid material or gas or equally suitable for this function. The combination would result in the flexible member (100) of DeLuca replacing the flexible member in Hagan. As a result, the gaseous medium is retained between the flexible member (100 of DeLuca) and housing (12 of Hagan). Substantially none of the gaseous vibration damping medium is retained between the clamping member (230, 250, 256) and the housing (at end portions 172, 174).

25. With respect to claim 6, Hagan discloses a power tool having a handle (32) and a motor (14). The handle comprises a gripping portion (outer surface of handle, gripped by user) and a vibration damping medium extending outwardly from the gripping portion. The gripping portion (outer surface of 32 where user's hand contacts the handle) surrounds the medium and secures the medium in the gripping portion. It is noted, that while Hagan shows the damping arrangement at the end of the of the housing of the power tool in Hagan, Hagan discloses that this arrangement of the damping material protruding through apertures in a structural piece can

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also be applied within the handle assembly 32 to dampen vibration (column 5, lines 40-44). As such, reference to elements 30 and all elements associated therein, and 32 will be used interchangeably here. The damping medium is disposed relative to the gripping portion (on 32) and positioned thereon to enable a user's hand to contact the gripping portion (on 32) and the medium simultaneously while the tool is gripped. Hagan further shows a cover piece (100) forming at least part (all) of the gripping portion, and a fastening mechanism (138) securing the cover piece (100) with the housing (12). The cover piece covers a portion of the gripping portion (where contact is made with the housing) adjacent the flexible sheet. It is noted that the fastening mechanism would still be required to fasten the cover piece even in use in the handle, as such an arrangement provides for the sealing function also discussed by Hagan. Hagan fails to disclose the damping medium to be a gaseous medium within a chamber.

26. DeLuca teaches a tool with a gripping portion where the gripping portion includes a flexible member (100) containing a gaseous damping medium (column 12, lines 20-21) in a chamber. The chamber protrudes through an aperture (254) in a clamping member (230, 250, 256). DeLuca uses the arrangement to provide a cushioning effect for the user (abstract).

DeLuca also shows the flexible member may be solid, similar to that of Hagan, or gaseous, similar to applicant's. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Hagan as taught by DeLuca, such that Hagan includes the flexible member with a gaseous damping medium in order to provide a cushioning effect for the user. The combination results in the gaseous vibration damping medium being retained between the chamber (106 of DeLuca) and housing such that the chamber protrudes through the aperture (shown by DeLuca and Hagan), and substantially none of the gaseous medium is located

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between the cover piece (100 of Hagan) and gripping portion. It is noted that for the purpose of this examination, the cover piece is the element including the apertures. The gripping portion is any area a user's hand may touch. In this case, there are portions of the handle, or gripping portion, where there is no gaseous medium located between such portion and the cover piece, for example, along the outer periphery of the handle.

27. With respect to claim 7, the combinations cover piece (230, 250, 256 of DeLuca, or 100 of Hagan) is made of a material that is relatively hard as compared to the chamber including the gaseous vibration damping medium (of DeLuca). Examiner notes that any material will be relatively hard compared to a gas.

28. With respect to claim 9, Hagan discloses a power drill comprising a main body (12) and handle (32) having opposite side surfaces each defining a gripping region (portion of handle to grasped, analogous to 100). Hagan also shows a damping medium (102) positioned on the handle. It is noted that Hagan discloses the cushion arrangement of 30 may also be used in the handle. In the arrangement at 30, one member is screwed to the housing. That member (100) includes apertures, through which the damping medium protrudes. The damping medium protrudes outwardly from the gripping region (portion grasped by a user). The gripping region covers a portion of the damping medium. The gripping region includes a recess portion (apertures in 100) for retain the damping medium on the handle. The gripping region covers a portion of the handle (where gripping region screws attach to the handle, the bosses overlap). The gripping region provides a gripping surface adjacent to the medium. Hagan does not show the damping medium to be chambers enclosing a gaseous medium, located on opposite side surfaces of handle, where the chambers are discreet each other, and arranged such the medium is

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retained between chamber and handle, and the chambers protrude outward from the gripping region.

29. DeLuca teaches a tool with a gripping portion where the gripping portion includes a flexible member (100) containing a gaseous damping medium (column 12, lines 20-21) in a chamber. The chambers protrude through an aperture (254) extending outward from a gripping region (230, 250, 256) on opposites sides of a handle (in Figure 10, there are chambers on opposing sides of the handle), and are discreet from each other (separated by sealed portions between each chamber). DeLuca uses the arrangement to provide a cushioning effect for the user (abstract). DeLuca also shows the flexible member may be solid, similar to that of Hagan, or gaseous, similar to applicant's. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Hagan as taught by DeLuca, such that Hagan includes the flexible member with a gaseous damping medium in order to provide a cushioning effect for the user. The combination results in the gaseous medium being retained between the chamber (106 of DeLuca) and handle (32 of Hagan).

30. With respect to claim 10, DeLuca teaches the use of for chambers (106) enclosing a gaseous vibration damping medium, with two chambers protruding from each gripping region. When the gripping region (230, 250, 256) in DeLuca is split down the middle, such that there are two gripping regions, one on each side of the handle, there are two chambers per side.

31. With respect to claim 11, the combination shows two cover pieces (100 of Hagan) having an aperture therethrough, disposed on each side surface and defining at least a portion (all) of the gripping region of the handle.

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32. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeLuca in view of Hagan and Rechelbacher (U.S. Patent No. 6,647,582). With respect to claim 2, DeLuca discloses a gripping portion (230, 250, 256) on a hand tool. The gripping portion (30) is adapted to be engaged by the hand of a user. The gripping portion further includes at least one flexible sheet (100, 204) and a support member (230, 250, 256) having at least one aperture (254, see figure 11), where the flexible sheet protrudes through the aperture. The flexible sheet (100, 204) is mounted to the support (230, 250, 256). The flexible sheet defines a chamber (106) enclosing a gaseous medium. DeLuca fails to show the hand tool to be a power tool and for the medium to be retained between the housing a single thickness of the sheet such that the chamber is bound by the housing and the single thickness of the sheet.

33. Hagan teaches a power tool with a housing (12) and motor (14) and a gripping portion (30) where the gripping portion includes a flexible member (102) protruding through the gripping member to provide a damping effect. It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the flexible member of DeLuca with the power tool of Hagan, as both inventions are concerned with the same problem and demonstrate known structures to address the problem. As result, the gaseous chambers of DeLuca would be implemented in place of flexible sheet 102 in Hagan, such the DeLuca is used with a power tool.

34. Rechelbacher teaches a comfort grip arrangement (30) on a tool where a flexible sheet encloses a damping medium (32). In figures 4 and 5, Rechelbacher shows that the flexible sheet and damping medium may include an inner sheet bounding the chamber with the damping medium (figure 5), or alternatively, may the chamber may onlt be bounded by a housing (18) and

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flexible sheet. From this, it is clear that these two arrangement are equivalent and interchangeable in the art. De Luca shows only an arrangement where a second sheet or layer bounds the inside of the chamber. However, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the chamber of DeLuca such that it is bounded by the housing and a single thickness of the flexible sheet only, as Rechelbacher teaches DeLuca's arrangement and the claimed arrangement to be equivalent and interchangeable.

35. With respect to claims 3-5, DeLuca discloses the flexible sheet is formed by a plurality of pockets (forming 106). DeLuca shows the support (230, 250, 256) to form part of the housing (adjacent member to which it is attached). DeLuca further discloses the damping mater to be air (column 10, lines 45-47).

36. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagan in view of Thomas et al ("Thomas", U.S. Patent No. 3,849,943) and DeLuca. With respect to claim 12, discloses a tool having a housing (12) including a main body with an upper gripping portion (30) and a drive motor (14) disposed within the main body. A vibration damping medium is rests on a portion of the housing (via 30, which itself, is also a portion of the housing), and protrudes from an upper surface of the gripping portion. The gripping portion (30) includes an inner surface of the housing (surface of housing to which 30 is attached), and the gripping portion (30) covers the housing portion (12) adjacent the medium (102), where the gripping portion (30) is attached to the housing. The gripping portion (30) provides a surface adjacent the chamber and continuous with the housing. Hagan does not teach the power sander, or the damping medium to be gaseous and enclosed by a chamber.

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37. Thomas discloses a power sander having a handle (40) with a gripping region (area grasped by user's hand) and a downwardly extending platen (24). The power sander of Thomas is subject to vibrations that result from the operation of many power tools. It would be obvious to one having ordinary skill in the art at the time of the invention to use the Hagan's vibration damping mechanism on a power sander, such that user may comfortable operation the power sander.

38. DeLuca teaches a tool with a gripping portion where the gripping portion includes a flexible member (100) containing a gaseous damping medium (column 12, lines 20-21) in a chamber. The chambers protrude through an aperture (254) extending outward from a gripping region (230, 250, 256) on opposite sides of a handle (in Figure 10, there are chambers on opposing sides of the handle), and are discrete from each other (separated by sealed portions between each chamber). DeLuca uses the arrangement to provide a cushioning effect for the user (abstract). DeLuca also shows the flexible member may be solid, similar to that of Hagan, or gaseous, similar to applicant's. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Hagan as taught by DeLuca, such that Hagan includes the flexible member with a gaseous damping medium in order to provide a cushioning effect for the user. The combination results in the gaseous medium being retained between the chamber (106 of DeLuca) and housing (12 of Hagan), such that the chambers protrude from the gripping region, and substantially none of the damping medium is located between the inner surface of the housing and the gripping region. This is true where the gripping region and housing connect in Hagan. As whole, the combination results in the DeLuca/Hagan discussed here being implemented on the handle of Thomas' power sander.

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39. With respect to claim 13, discloses a tool having a housing (12) including a main body, a handle (32), and a drive motor (14) disposed within the main body. A vibration damping medium (102) is rests on a portion of the housing (via 30, which itself, is also a portion of the housing), and protrudes from an upper surface of the handle (30). A gripping portion (Any part of the handle that can be grasped; 30) includes an inner surface of the housing (surface of housing to which 30 is attached), and the gripping portion (30) covers the housing portion (12) adjacent the medium (102), where the gripping portion (30) is attached to the housing. The gripping portion (30) provides a surface adjacent the chamber and continuous with the housing. It is noted that the claimed gripping portion appears to structurally overlap with other claimed elements. For this reason, it appears proper to identify both the upper surface of handle and the gripping portion with the same reference number. Hagan does not teach the power sander, or the damping medium to be gaseous and enclosed by a chamber.

40. Thomas discloses a power sander having a handle extending rearwardly (40) with a gripping region (area grasped by user's hand) and a downwardly extending platen (24). The power sander of Thomas is subject to vibrations that result from the operation of many power tools. It would been obvious to one having ordinary skill in the art at the time of the invention to use the Hagan's vibration damping mechanism on a power sander, such that user may comfortable operation the power sander.

41. DeLuca teaches a tool with a gripping portion where the gripping portion includes a flexible member (100) containing a gaseous damping medium (column 12, lines 20-21) in a chamber. The chambers protrude through an aperture (254) extending outward from a gripping region (230, 250, 256). DeLuca uses the arrangement to provide a cushioning effect for the user

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(abstract). DeLuca also shows the flexible member may be solid, similar to that of Hagan, or gaseous, similar to applicant's. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Hagan as taught by DeLuca, such that Hagan includes the flexible member with a gaseous damping medium in order to provide a cushioning effect for the user. The combination results in the gaseous medium being retained between the chamber (106 of DeLuca) and housing (12 of Hagan), such that the chambers protrude from the gripping region, and substantially none of the damping medium is located between the inner surface of the housing and the gripping region. This is true where the gripping region and housing connect in Hagan. The surface of the gripping portion (30) is continuous with the housing. As whole, the combination results in the DeLuca/Hagan discussed here being implemented on the handle of Thomas' power sander.

42. With respect to claim 14, DeLuca teaches two discreet chambers (106). Hagan, as modified, would include the two chambers of DeLuca projecting in place of medium 102 from an upper surface of the handle.

43. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hagan in view of Lentino (U.S. Patent No. 5,083,376) and DeLuca. With respect to claim 15, Hagan discloses a power tool comprising a main body housing (12) with an opening therethrough defining a handle (30) rearward of the opening, and motor (14) disposed therein. The handle (30) includes a gripping portion (100) and a damping medium (102) protruding outwardly from the gripping portion. The damping medium is disposed relative to the gripping portion (100) and the chamber is positioned on the gripping portion (100) enabling a user's hand to contact both the gripping

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portion and damping medium. Hagan further discloses a cover (100) from at least a portion (all) of the gripping portion, and including at least one aperture (through which 102 protrudes) through which the damping medium protrudes. A fastening mechanism (138) secures the cover piece to the housing, and the cover piece covering a portion of the gripping portion adjacent the chamber, the cover piece functioning as the gripping portion adjacent the chamber. Hagan does not disclose a power saw or the damping medium to be gaseous and enclosed in a chamber.

44. Lentino teaches a power saw (10) including a housing with an opening receiving a saw blade (B) and motor. The saw includes a handle portion 14 rearward of the opening. This handle portion is subjected to vibrations from the impacts of the saw blade with other objects. Using the damping arrangement of Hagan in combination with Lentino provides a comfortable to a user of a saw, by dampening vibration. IT would have been obvious to one having ordinary skill in the art at the time of the invention to use the arrangement of Hagan in combination with the saw of Lentino. Hagan has demonstrated such an arrangement is suitable for dampening vibration in handles of power tools. One of ordinary skill would recognize such an advantage and apply to it handles in power saws.

45. DeLuca teaches a tool with a gripping portion where the gripping portion includes a flexible member (100) containing a gaseous damping medium (column 12, lines 20-21) in a chamber. The chambers protrude through an aperture (254) extending outward from a gripping region (230, 250, 256). DeLuca uses the arrangement to provide a cushioning effect for the user (abstract). DeLuca also shows the flexible member may be solid, similar to that of Hagan, or gaseous, similar to applicant's. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Hagan as taught by DeLuca, such that Hagan includes

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the flexible member with a gaseous damping medium in order to provide a cushioning effect for the user. The combination results in the gaseous medium being retained between the chamber (106 of DeLuca) and housing (12 of Hagan), such that the chambers protrude from the gripping region, and substantially none of the damping medium is located between the inner surface of the housing and the gripping region. This is true where the gripping region and housing connect in Hagan. The surface of the gripping portion (30) is continuous with the housing. As whole, the combination results in the DeLuca/Hagan discussed here being implemented on the handle of Lentino's power sander.

***Allowable Subject Matter***

46. The indicated allowability of claims 2-5 is withdrawn in view of the newly discovered reference(s) to Hagan and Rechelbacher. Rejections based on the newly cited reference(s) are recited above.

***Response to Arguments***

47. Applicant's arguments with respect to all have been considered but are moot in view of the new ground(s) of rejection. New rejections under section 112 have been raised, regarding the scope and clarity of the claim language, most prominently, the use of a "gripping portion", and exactly what that element encompasses. Additionally, new art has been cited in the rejections of the claim above, and the indicated allowability of claims 2-5 has been withdrawn. The amendment after final of 4/24/07 was entered, and considered in this action.

***Conclusion***

48. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are cited to further show the state of the art with respect to cushioned handles: Kuszniir, Remmert et al, Lin, Lee, Main, and Heun.

49. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Kyle whose telephone number is 571-272-7057. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

50. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

51. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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